

ASSEMBLY BILL

No. 776

Introduced by Assembly Members Aghazarian and Lieu

February 22, 2007

An act to amend Sections 25299.54 and 25299.57 of the Health and Safety Code, relating to underground storage tanks.

LEGISLATIVE COUNSEL'S DIGEST

AB 776, as introduced, Aghazarian. Petroleum: underground storage tanks: claims.

The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 requires owners and operators of petroleum underground storage tanks to pay a storage fee for each gallon of petroleum placed in the tank and the fees are required to be deposited in the Underground Storage Tank Cleanup Fund. The State Water Resources Control Board is authorized to expend money from that fund to pay claims to aid eligible owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks. A claimant for corrective action costs is required to be in compliance with specified insurance and permit requirements, but the board is authorized to waive those requirements if the board makes certain findings regarding the claimant's compliance with permit requirements.

This bill would revise the eligibility requirements for an applicant to the fund by deleting the condition that the applicant be in compliance with those permit and insurance requirements. The bill would also repeal the authority of the board to waive those requirements and instead would require an applicant to be in compliance with those requirements before the date when the applicant submits an application for a claim. The

changes made by this bill would apply retroactively to an application for a claim to the fund that was pending before, or on appeal from, the board on and after January 1, 2007.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The primary purpose of the Underground Storage Tank
4 Cleanup Fund is to provide funds for the cleanup of releases of
5 petroleum from current and former underground tanks.

6 (b) While applicants for funding from the Underground Storage
7 Tank Cleanup Fund are expected to have achieved current
8 compliance with all applicable laws regarding underground tanks
9 prior to submitting a completed claim, it is not the intent of the
10 Legislature that access to the fund should be denied based on past
11 noncompliance. Adequate remedies already exist in other parts of
12 the Health and Safety Code and the Revenue and Taxation Code
13 to address past noncompliance.

14 (c) The purpose of this act is to clarify the Legislature's intent
15 with regard to the eligibility requirements for applying for those
16 funds.

17 SEC. 2. Section 25299.54 of the Health and Safety Code is
18 amended to read:

19 25299.54. (a) Except as provided in subdivisions (b), (c), (d),
20 ~~(e)~~, (g), and (h), an owner or operator, required to perform
21 corrective action pursuant to Section 25296.10, or an owner or
22 operator who, as of January 1, 1988, is required to perform
23 corrective action, who has initiated this action in accordance with
24 Division 7 (commencing with Section 13000) of the Water Code,
25 who is undertaking corrective action in compliance with waste
26 discharge requirements or other orders issued pursuant to Division
27 7 (commencing with Section 13000) of the Water Code, or Chapter
28 6.7 (commencing with Section 25280), may apply to the board for
29 satisfaction of a claim filed pursuant to this article.

30 (b) A person who ~~has failed to comply with~~ is subject to Article
31 3 (commencing with Section 25299.30) *and who has not achieved*

1 *compliance with that article before the date of the claim application*
2 *is ineligible to file a claim pursuant to this section.*

3 (c) Any owner or operator of an underground storage tank
4 containing petroleum is ineligible to file a claim pursuant to this
5 section if the person meets both of the following conditions:

6 (1) The person knew, before January 1, 1988, of the
7 unauthorized release of petroleum which is the subject of the claim.

8 (2) The person did not initiate, on or before June 30, 1988, any
9 corrective action in accordance with Division 7 (commencing with
10 Section 13000) of the Water Code concerning the release, or the
11 person did not, on or before June 30, 1988, initiate corrective action
12 in accordance with Chapter 6.7 (commencing with Section 25280)
13 or the person did not initiate action on or before June 30, 1988, to
14 come into compliance with waste discharge requirements or other
15 orders issued pursuant to Division 7 (commencing with Section
16 13000) of the Water Code concerning the release.

17 (d) An owner or operator who violates Section 25296.10 or any
18 corrective action order, directive, notification, or approval order
19 issued pursuant to this chapter, Chapter 6.7 (commencing with
20 Section 25280), or Division 7 (commencing with Section 13000)
21 of the Water Code, is liable for any corrective action costs that
22 result from the owner's or operator's violation and is ineligible to
23 file a claim *for those additional corrective action costs* pursuant
24 to this section.

25 (e) Notwithstanding this chapter, a person who owns a tank
26 located underground that is used to store petroleum may apply to
27 the board for satisfaction of a claim, and the board may pay the
28 claim pursuant to Section 25299.57 without making the findings
29 specified in paragraph (3) of subdivision (d) of Section 25299.57
30 if all of the following apply:

31 (1) The tank meets one of the following requirements:

32 (A) The tank is located at the residence of a person on property
33 used exclusively for residential purposes at the time of discovery
34 of the unauthorized release of petroleum.

35 (B) The tank owner demonstrates that the tank is located on
36 property that, on and after January 1, 1985, is not used for
37 agricultural purposes, the tank is of a type specified in
38 subparagraph (B) of paragraph (1) of subdivision (y) of Section
39 25281, and the petroleum in the tank is used solely for the purposes

1 specified in subparagraph (B) of paragraph (1) of subdivision (y)
2 of Section 25281 on and after January 1, 1985.

3 (2) The tank is not a tank described in subparagraph (A) of
4 paragraph (1) of subdivision (y) of Section 25281 and the tank is
5 not used on or after January 1, 1985, for the purposes specified in
6 that subparagraph.

7 ~~(3) The claimant has complied with~~ *Prior to the date of the*
8 *claim application, the claimant is in compliance with* Section
9 25299.31 and the permit requirements of Chapter 6.7 (commencing
10 with Section 25280), or the claimant is not subject to the
11 requirements of those provisions.

12 (f) Whenever the board has authorized the prepayment of a
13 claim pursuant to Section 25299.57, and the amount of money
14 available in the fund is insufficient to pay the claim, the owner or
15 operator shall remain obligated to undertake the corrective action
16 in accordance with Section 25296.10.

17 (g) The board shall not reimburse a claimant for any eligible
18 costs for which the claimant has been, or will be, compensated by
19 another person. This subdivision does not affect reimbursement
20 of a claimant from the fund under either of the following
21 circumstances:

22 (1) The claimant has a written contract, other than an insurance
23 contract, with another person that requires the claimant to
24 reimburse the person for payments the person has provided the
25 claimant pending receipt of reimbursement from the fund.

26 (2) An insurer has made payments on behalf of the claimant
27 pursuant to an insurance contract and either of the following apply:

28 (A) The insurance contract explicitly coordinates insurance
29 benefits with the fund and requires the claimant to do both of the
30 following:

31 (i) Maintain the claimant's eligibility for reimbursement of costs
32 pursuant to this chapter by complying with all applicable eligibility
33 requirements.

34 (ii) Reimburse the insurer for costs paid by the insurer pending
35 reimbursement of those costs by the fund.

36 (B) The claimant received a letter of commitment prior to June
37 30, 1999, for the occurrence and the claimant is required to
38 reimburse the insurer for any costs paid by the insurer pending
39 reimbursement of those costs by the fund.

1 (h) (1) Except as provided in paragraph (2), a person who
2 purchases or otherwise acquires real property on which an
3 underground storage tank or tank specified in subdivision (e) is
4 situated shall not be reimbursed by the board for a cost attributable
5 to an occurrence that commenced prior to the acquisition of the
6 real property if both of the following conditions apply:

7 (A) The purchaser or acquirer knew, or in the exercise of
8 reasonable diligence would have discovered, that an underground
9 storage tank or tank specified in subdivision (e) was located on
10 the real property being acquired.

11 (B) Any person who owned the site or owned or operated an
12 underground storage tank or tank specified in subdivision (e) at
13 the site during or after the occurrence and prior to acquisition by
14 the purchaser or acquirer would not have been eligible for
15 reimbursement from the fund.

16 (2) Notwithstanding paragraph (1), if the claim is filed on or
17 after January 1, 2003, the board may reimburse the eligible costs
18 claimed by a person who purchases or otherwise acquires real
19 property on which an underground storage tank or tank specified
20 in subdivision (e) is situated, if all of the following conditions
21 apply:

22 (A) The claimant is the owner or operator of the tank that had
23 an occurrence that commenced prior to the owner's acquisition of
24 the real property.

25 (B) The claimant satisfies all eligibility requirements, other than
26 those specified in paragraph (1).

27 (C) The claimant is not an affiliate of any person whose act or
28 omission caused or would cause ineligibility for the fund.

29 (3) If the board reimburses a claim pursuant to paragraph (2),
30 any person specified in subparagraph (B) of paragraph (1), other
31 than a person who is ineligible for reimbursement from the fund
32 solely because the property was acquired from another person who
33 was ineligible for reimbursement from the fund, shall be liable for
34 the amount paid from the fund. The Attorney General, upon request
35 of the board, shall bring a civil action to recover the liability
36 imposed under this paragraph. All money recovered by the
37 Attorney General under this paragraph shall be deposited in the
38 fund.

(4) The liability established pursuant to paragraph (3) does not limit or supersede liability under any other provision of state or federal law, including common law.

(5) For purposes of this subdivision, the following definitions shall apply:

(A) “Affiliate” means a person who has one or more of the following relationships with another person:

(i) Familial relationship.

(ii) Fiduciary relationship.

(iii) A relationship of direct or indirect control or shared interests.

(B) Affiliates include, but are not limited to, any of the following:

(i) Parent corporation and subsidiary.

(ii) Subsidiaries that are owned by the same parent corporation.

(iii) Business entities involved in a reorganization, as defined in Section 181 of the Corporations Code.

(iv) Corporate officer and corporation.

(v) Shareholder that owns a controlling block of voting stock and the corporation.

(vi) Partner and the partnership.

(vii) Member and a limited liability company.

(viii) Franchiser and franchisee.

(ix) Settlor, trustee, and beneficiary of a trust.

(x) Debtor and bankruptcy trustee or debtor-in-possession.

(xi) Principal and agent.

(C) “Familial relationship” means relationships between family members, including, and limited to, a husband, wife, child, stepchild, parent, grandparent, grandchild, brother, sister, stepbrother, stepsister, stepmother, stepfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, and, if related by blood, uncle, aunt, niece, or nephew.

(i) The Legislature finds and declares that the changes made to subparagraph (A) of paragraph (1) of subdivision (e) by Chapter 1290 of the Statutes of 1992 is declaratory of existing law.

(j) The Legislature finds and declares that the amendment of subdivisions (a) and (g) by Chapter 328 of the Statutes of 1999 is declaratory of existing law.

SEC. 3. Section 25299.57 of the Health and Safety Code is amended to read:

1 25299.57. (a) If the board makes the determination specified
2 in subdivision (d), the board may only pay for the costs of a
3 corrective action that exceeds the level of financial responsibility
4 required to be obtained pursuant to Section 25299.32, but not more
5 than one million five hundred thousand dollars (\$1,500,000) for
6 each occurrence. In the case of an owner or operator who, as of
7 January 1, 1988, was required to perform corrective action, who
8 initiated that corrective action in accordance with Division 7
9 (commencing with Section 13000) of the Water Code or Chapter
10 6.7 (commencing with Section 25280), and who is undertaking
11 the corrective action in compliance with waste discharge
12 requirements or other orders issued pursuant to Division 7
13 (commencing with Section 13000) of the Water Code or Chapter
14 6.7 (commencing with Section 25280), the owner or operator may
15 apply to the board for satisfaction of a claim filed pursuant to this
16 article. The board shall notify claimants applying for satisfaction
17 of claims from the fund of eligibility for reimbursement in a prompt
18 and timely manner and that a letter of credit or commitment that
19 will obligate funds for reimbursement shall follow the notice of
20 eligibility as soon thereafter as possible.

21 (b) (1) For claims eligible for reimbursement pursuant to
22 subdivision (c) of Section 25299.55, the claimant shall submit the
23 actual cost of corrective action to the board, which shall either
24 approve or disapprove the costs incurred as reasonable and
25 necessary. At least 15 days before the board proposes to disapprove
26 the reimbursement of corrective action costs that have been
27 incurred on the grounds that the costs were unreasonable or
28 unnecessary, the board shall issue a notice advising the claimant
29 and the lead agency of the proposed disallowance, to allow review
30 and comment.

31 (2) The board shall not reject any actual costs of corrective
32 action in a claim solely on the basis that the invoices submitted
33 fail to sufficiently detail the actual costs incurred, if all of the
34 following apply:

35 (A) Auxiliary documentation is provided that documents to the
36 board's satisfaction that the invoice is for necessary corrective
37 action work.

38 (B) The costs of corrective action work in the claim are
39 reasonably commensurate with similar corrective action work

1 performed during the same time period covered by the invoice for
2 which reimbursement is sought.

3 (C) The invoices include a brief description of the work
4 performed, the date that the work was performed, the vendor, and
5 the amount.

6 (c) (1) For claims eligible for prepayment pursuant to
7 subdivision (c) of Section 25299.55, the claimant shall submit the
8 estimated cost of the corrective action to the board, which shall
9 approve or disapprove the reasonableness of the cost estimate.

10 (2) If the claim is for reimbursement of costs incurred pursuant
11 to a performance-based contract, Article 6.5 (commencing with
12 Section 25299.64) shall apply to that claim.

13 (d) Except as provided in subdivision (j), a claim specified in
14 subdivision (a) may be paid if the board makes all of the following
15 findings:

16 (1) There has been an unauthorized release of petroleum into
17 the environment from an underground storage tank.

18 (2) The claimant is required to undertake or contract for
19 corrective action pursuant to Section 25296.10, or, as of January
20 1, 1988, the claimant has initiated corrective action in accordance
21 with Division 7 (commencing with Section 13000) of the Water
22 Code.

23 (3) ~~(A) Except as provided in subparagraph (B), the claimant~~
24 ~~has complied with~~ *Prior to the date when the claimant submits a*
25 *completed application to the fund, the claimant is in compliance*
26 *with the applicable provisions of* Section 25299.31 *and the permit*
27 *requirements of Chapter 6.7 (commencing with Section 25280).*

28 ~~(B) All claimants who file their claim on or after January 1,~~
29 ~~1994, and all claimants who filed their claim prior to that date but~~
30 ~~are not eligible for a waiver of the permit requirement pursuant to~~
31 ~~board regulations in effect on the date of the filing of the claim,~~
32 ~~and who did not obtain or apply for any permit required by~~
33 ~~subdivision (a) of Section 25284 by January 1, 1990, shall be~~
34 ~~subject to subparagraph (A) regardless of the reason or reasons~~
35 ~~that the permit was not obtained or applied for. However, on and~~
36 ~~after January 1, 1994, the board may waive the provisions of~~
37 ~~subparagraph (A) as a condition for payment from the fund if the~~
38 ~~board finds all of the following:~~

1 ~~(i) The claimant was unaware of the permit requirement prior~~
2 ~~to January 1, 1990, and there was no intent to intentionally avoid~~
3 ~~the permit requirement or the fees associated with the permit.~~

4 ~~(ii) Prior to submittal of the application to the fund, the claimant~~
5 ~~has complied with Section 25299.31 and has obtained and paid~~
6 ~~for all permits currently required by this paragraph.~~

7 ~~(iii) Prior to submittal of the application to the fund, the~~
8 ~~claimant has paid all fees, interest, and penalties imposed pursuant~~
9 ~~to Article 5 (commencing with Section 25299.40) and Part 26~~
10 ~~(commencing with Section 50101) of Division 2 of the Revenue~~
11 ~~and Taxation Code for the underground storage tank that is the~~
12 ~~subject of the claim.~~

13 ~~(C) (i) A claimant exempted pursuant to subparagraph (B)~~
14 ~~shall obtain a level of financial responsibility twice as great as the~~
15 ~~amount which the claimant is otherwise required to obtain pursuant~~
16 ~~to subdivision (a) of Section 25299.32.~~

17 ~~(ii) The board may waive the requirements of clause (i) if the~~
18 ~~claimant can demonstrate that the conditions specified in clauses~~
19 ~~(i) to (iii), inclusive, of subparagraph (B) were satisfied prior to~~
20 ~~the causing of any contamination. That demonstration may be~~
21 ~~made through a certification issued by the permitting agency based~~
22 ~~on site and tank tests at the time of permit application or in any~~
23 ~~other manner acceptable to the board.~~

24 ~~(D) The board shall rank all claims resubmitted pursuant to~~
25 ~~subparagraph (B) lower than all claims filed before January 1,~~
26 ~~1994, within their respective priority classes specified in~~
27 ~~subdivision (b) of Section 25299.52.~~

28 (4) The board has approved either the costs incurred for the
29 corrective action pursuant to subdivision (b) or the estimated costs
30 for corrective action pursuant to subdivision (c).

31 (5) ~~The~~ *Before the date when the claimant submits a completed*
32 *application to the fund, the* claimant has paid all fees, interest, and
33 penalties imposed pursuant to Article 5 (commencing with Section
34 29299.40) and Part 26 (commencing with Section 50101) of
35 Division 2 of the Revenue and Taxation Code for the underground
36 storage tank that is the subject of the claim.

37 (e) The board shall provide the claimant, whose cost estimate
38 has been approved, a letter of credit authorizing payment of the
39 costs from the fund.

1 (f) The claimant may submit a request for partial payment to
2 cover the costs of corrective action performed in stages, as
3 approved by the board.

4 (g) (1) Any claimant who submits a claim for payment to the
5 board shall submit multiple bids for prospective costs as prescribed
6 in regulations adopted by the board pursuant to Section 25299.77.

7 (2) Any claimant who submits a claim to the board for the
8 payment of professional engineering and geologic work shall
9 submit multiple proposals and fee estimates, as required by the
10 regulations adopted by the board pursuant to Section 25299.77.
11 The claimant's selection of the provider of these services is not
12 required to be based on the lowest estimated fee, if the fee estimate
13 conforms with the range of acceptable costs established by the
14 board.

15 (3) Any claimant who submits a claim for payment to the board
16 for remediation construction contracting work shall submit multiple
17 bids, as required in the regulations adopted by the board pursuant
18 to Section 25299.77.

19 (4) Paragraphs (1), (2), and (3) do not apply to a tank owned or
20 operated by a public agency if the prospective costs are for private
21 professional services within the meaning of Chapter 10
22 (commencing with Section 4525) of Division 5 of Title 1 of the
23 Government Code and those services are procured in accordance
24 with the requirements of that chapter.

25 (h) The board shall provide, upon the request of a claimant,
26 assistance to the claimant in the selection of contractors retained
27 by the claimant to conduct reimbursable work related to corrective
28 actions. The board shall develop a summary of expected costs for
29 common remedial actions. This summary of expected costs may
30 be used by claimants as a guide in the selection and supervision
31 of consultants and contractors.

32 (i) The board shall pay, within 60 days from the date of receipt
33 of an invoice of expenditures, all costs specified in the work plan
34 developed pursuant to Section 25296.10, and all costs that are
35 otherwise necessary to comply with an order issued by a local,
36 state, or federal agency.

37 (j) (1) The board shall pay a claim of not more than three
38 thousand dollars (\$3,000) per occurrence for regulatory technical
39 assistance to an owner or operator who is otherwise eligible for
40 reimbursement under this chapter.

1 (2) For the purposes of this subdivision, regulatory technical
2 assistance is limited to assistance from a person, other than the
3 claimant, in the preparation and submission of a claim to the fund.
4 Regulatory technical assistance does not include assistance in
5 connection with proceedings under Section 25296.40, 25299.39.2,
6 or 25299.56 or any action in court.

7 (k) (1) Notwithstanding any other provision of this section, the
8 board shall pay a claim for the costs of corrective action to a person
9 who owns property on which is located a release from a petroleum
10 underground storage tank that has been the subject of a completed
11 corrective action and for which additional corrective action is
12 required because of additionally discovered contamination from
13 the previous release, only if the person who carried out the earlier
14 and completed corrective action was eligible for, and applied for,
15 reimbursement pursuant to subdivision (b), and only to the extent
16 that the amount of reimbursement for the earlier corrective action
17 did not exceed the amount of reimbursement authorized by
18 subdivision (a). Reimbursement to a claimant on a reopened site
19 shall occur when funds are available, and reimbursement
20 commitment shall be made ahead of any new letters of commitment
21 to be issued, as of the date of the reopening of the claim, if funding
22 has occurred on the original claim, in which case funding shall
23 occur at the time it would have occurred under the original claim.

24 (2) For purposes of this subdivision, a corrective action is
25 completed when the local agency or regional board with
26 jurisdiction over the site or the board issues a closure letter pursuant
27 to subdivision (g) of Section 25296.10.

28 SEC. 4. The changes made by this act to Sections 25299.54
29 and 25299.57 of the Health and Safety Code shall apply
30 retroactively to any application for a claim to the Underground
31 Storage Tank Cleanup Fund that was pending before, or on appeal
32 from, the State Water Resources Control Board on and after
33 January 1, 2007.